IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2590 of 2006
With
FIRST APPEAL No. 2591 of 2006
To
FIRST APPEAL No. 2593 of 2006
With
CIVIL APPLICATION No. 8868 of 2006
In
FIRST APPEAL No. 2590 of 2006
To
CIVIL APPLICATION No. 8871 of 2006
In
FIRST APPEAL No. 2593 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATIONAL INSURANCE COMPANY LIMITED - Appellant(s)
Versus
SURESHBHAI @ SURESHCHANDRA MAGANBHAI PARMAR & 3 - Defendant(s)

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Appearance :

MS MEGHA JANI for Appellant(s) : 1,
MR HARSHADRAY A DAVE for Defendant(s) : 1 - 2.
MR HARDIK A DAVE for Defendant(s) : 2,
RULE SERVED for Defendant(s) : 3 - 4.
MR HARDIK C RAWAL for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

These appeals are directed against the common judgment and four awards dated 27th September, 2005 passed by the Motor Accident Claims Tribunal (Aux.), Nadiad in MACP Nos.933, 941, 849 and 1073 of 1995 awarding compensation amounts on account of the death of two persons in MACP Nos.933/95 and 849/95 and on account of the injuries sustained by the claimants in other two petitions.

2. Since the appellant Insurance Company has challenged only the rate of interest awarded by the Tribunal, it is not necessary to set out any facts except to state that the accident in question took place on 17th May 1995 giving rise to six claim petitions. However, since only four claim petitions were prosecuted and other two were dismissed for default, the Tribunal has made awards only in the above-numbered four claim petitions. The amounts of compensation granted were Rs.2,42,800/- and Rs.2,49,200/- in fatal cases and Rs.1,63,000/- and

Rs.94,400/- in injury cases.

3. It appears from the judgment under appeal that while the claimants prayed for interest at the rate of 20 per cent per annum, the Insurance Company had submitted that the rate of interest should be only 5.5 per cent. After referring to the decision of the Apex Court in **Kaushnuma Begum v. New India Assurance Company Ltd.**, (2001) 2 SCC 9, the Tribunal relied upon the decision of the Apex Court in **National Insurance Company Ltd v. Prembai Patel,** 2005 ACJ 1323 and awarded interest at the rate of 12 per cent. Hence these appeals by the Insurance Company.

4. Ms. Megha Jani, learned counsel for the appellant Insurance Company has submitted that interest awarded by the Tribunal at 12 per cent per annum is very much on the higher side. Relying on the decision of the Apex Court in **Tamil Nadu State Transport Corporation v. S.Rajapriya**, (2005) 6 SCC 236, Ms. Jani has submitted that the rate of interest could not have been higher than 7.5 per cent per annum.

5. On the other hand, Mr. Harshadrai Dave, learned counsel for the original-claimants, has supported the judgment of the Tribunal and submitted that provisions of section 171 of the Act confer discretion on the Tribunal to award appropriate rate of interest and that, therefore, this Court may not

interfere with the discretion exercised by the Tribunal.

6. Section 171 of the Motor Vehicles Act, 1988 reads as under:

> "171. Award of interest where any claim is allowed: Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf."

A bare perusal of the aforesaid provisions would indicate that discretion is conferred on the Tribunal to award appropriate rate of interest from the date of filing the claim petition till the date of realization of the amount.

7. Interest is undoubtedly compensation for delayed payment of the principal compensation amount being awarded by the Tribunal in fatal/injury cases on the basis of well-settled principles for assessment and computation of damages.

While exercising discretion for determining the rate of interest to be awarded on the amount of compensation, several factors have to be taken into consideration. Apart from the current rate of bank interest prevailing on the date of the award, the Tribunal has to take into account the duration for

which the claim petition had remained pending, whether delay in disposal of the claim petition is attributable to the claimants or to the opponents in the claim petition. In fact, there would be a large number of cases which the Tribunal may not have been able to take up on account of pressure of other work and not on account of any delay attributable either to the claimants or to the opponents in the claim petition. The longer the period between the date of filing the claim petition and the date of the award, greater would be the impact of the fact that interest being awarded is simple interest and not compound interest which deposits with the Bank would have fetched in the intervening period.

It is also required to be considered that part of the compensation amount may consist of the compensation being awarded for future loss of income or for loss of dependency benefit in future beyond the date of the award.

All such factors have to be taken into consideration for the purpose of determining the rate of interest.

8. Turning to the case law -

8.1 In **Kaushnuma Begum v. New India Assurance Company Limited**, (2001) 2 SCC 9, the Apex Court has considered this issue at some length and made the following observations:-

> "Now, we have to fix up the rate of interest. Section 171 of the M.V.Act empowers the Tribunal to direct that "in addition to the amount of compensation simple interest shall also be paid at such rate and from such rate and from such date nor earlier than the date of making the claim as may be specified in this behalf". Earlier 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of the Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest @ 9% on fixed deposits for one year. We, therefore, direct that compensation amount fixed herein before shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants."
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> (emphasis supplied)

8.2 Thereafter in **Tamil Nadu State Transport Corporation v. S.Rajapriya**, (decided on 20.4.2005), (2005) 6 SCC 236, New India Assurance Co. vs. Charlie, (decided on 29.3.2005), 2005 (10) SCC 720, TNSTC Ltd. vs. KI Bindu (decided on 5.10.2005), 2005 (8) SCC 473, the Apex Court speaking through Hon'ble Mr.Justice Arijit Pasayat awarded interest at the rate of 7.5% per annum.

8.3 Very recently the Apex Court in **U.P.State Road Transport Corporation v. Krishna Bala**, (decided on 13.7.2006), 2006 ACJ 2114 speaking through the very same learned Judge has observed as under:

> "13. Considering the principles as set out above .. ... entitlement of the claimants is Rs.3,37,000. The accident took place on

> 29.11.1990. Therefore, the rate of interest would be 9 per cent from the date of filing of the claim petition....”
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> (emphasis supplied)

8.4 In **National Insurance Co. Ltd. vs. Prembai** (decided on 18.4.2005), 2005 ACJ 1323, the accident had taken place on 9.11.1993. The Tribunal dismissed the claim petition on the ground that the deceased himself was responsible for the accident. The High Court allowed the appeal of the claimants and by judgment and order dated 9.1.1998 awarded compensation at Rs.2,10,000/- with interest at the rate of 12% p.a. from the date of filing the claim petition. The Insurance Company was also held liable to satisfy the entire award. In the appeal filed by the Insurance Company against the said judgment and award dated 9.1.1998 of the High Court, the Apex Court confirmed the award of the High Court in so far as it related to quantum of compensation and interest to be paid to the claimants, but the liability of the Insurance Company to satisfy the award was held to be restricted to that arising under the Workmen's Compensation Act and the owners of the vehicle were held liable to satisfy the remaining portion of the award.

Apart from the fact that the focus of the controversy in the said appeal before the Apex Court was the Insurance Company's liability to indemnify the owner beyond liability under the Workmen's Compensation Act, it appears that the Insurance

Company did not even make any grievance about the rate of interest awarded by the High Court. Besides in its decision dated 18.4.2005, the Apex Court declined to interfere with the amount of compensation and interest awarded by the High Court in January 1998 against the owner of the vehicle. Any reduction in the rate of interest would have also resulted into the Insurance Company being required to pay still lesser amount by way of interest after succeeding in getting its liability restricted as stated above.

8.5 In **Chellammal vs. Kailasam** (decided on 13.4.2005), 2006 ACJ 854, the discussion is only with regard to computation of compensation and there is no discussion with regard to the rate of interest awarded at the rate of 12% p.a. from the date of the claim petition till realization.

8.6. In **Bijoykumar Dugar vs. Bidyadhar Dutta** (decided on 1.3.2006), 2006 ACJ 1058 the accident had taken place on 15.4.1988. The Tribunal had awarded compensation of Rs.1,76,800/- with interest at the rate of 10% p.a. from the date of filing the claim petition till realization. While the claimants filed appeal for enhancement before the High court, the Insurance Company challenged the award by filing a writ petition under Article 226/227 of the Constitution challenging the award on the sole ground that the Insurance Company was not liable to pay interest on the compensation amount from 1988 as directed by the Tribunal. The High Court dismissed

the claimant's appeal for enhancement, but allowed the writ petition of the Insurance Company holding the claimants entitled to interest on the award amount only for a period of two years i.e. from January 1989 to October 1990 when the Insurance Company appeared and filed its written statement before the Tribunal. The claimants, therefore, filed two appeals before the Apex Court. The claimants even contended that the interest at the rate of 10% awarded by the Tribunal was on the lower side and ought to have been enhanced by the High Court to 18%. The Apex Court held that the amount of compensation awarded by the Tribunal to the claimants was just and equitable and warranted no further enhancement. The Apex Court also held that the writ petition filed by the Insurance Company was not maintainable against the order of the Tribunal awarding interest at the rate of 10%p.a..

On merits, the Apex Court gave the following finding on the controversy regarding the rate of interest :-

> “The MACT has awarded interest at the rate of 10% p.a. on the amount of compensation from the date of filing of the claim application till the date of payment. It is a discretionary relief granted by MACT and, in our view, the discretion exercised by the MACT cannot be said to be inadequate and inappropriate.”

The Apex Court accordingly only allowed the claimant's appeal as regards the rate of interest and

thus maintained the award of the Tribunal both as regards the amount of compensation and also as regards the rate of interest.

8.7. In **Oriental Insurance Co. Ltd. vs. R Swaminathan**, 2006 ACJ 1398, the details regarding the date of accident and the date of award of the Tribunal are not available from the reported judgment. The Tribunal had made an award of compensation of Rs.4,50,000/-. The learned Single Judge of the High Court interfered with the award and reduced the compensation amount to Rs.3 lakhs with interest at 12% p.a. from the date of the claim petition. The claimant, who had not filed any appeal against the Tribunal's award, filed Letters Patent Appeal before the Division Bench of the High Court. The Division Bench of the High Court allowed the appeal and awarded total compensation of Rs.7,44,000/- with interest at the rate of 18% p.a. from the date of the petition. Hence, the Insurance Company carried the matter before the Apex Court. The Apex Court allowed the appeal of the Insurance Company and determined the amount of compensation at Rs.4,10,000/- with interest at the rate of 12%p.a. from the date of the claim petition.

9. On a perusal of the aforesaid decisions of the Apex Court it is clear that while duration for which the claim petitions had remained pending is one of the relevant considerations, the current rate of bank interest prevailing on the date of the award is

also another relevant consideration. While the rate of interest was 7.5% or even lower about a year or two back, the interest rate has now started taking an upward swing.

10. Considering that the awards under challenge were rendered very recently in September 2005, the current rate of bank interest, and at the same time also considering the fact that the claim petitions were filed in the year 1995, we are of the view that interests of justice would be served if the rate of interest is determined at 9 per cent per annum rather than 12 per cent per annum awarded by the Tribunal.

11. In view of the above discussion, we partly allow the appeals. Without disturbing the principal amounts of compensation awarded by the Tribunal and the directions for payment of proportionate costs, we only reduce the rate of interest from 12 per cent to 9 per cent per annum from the date of the claim petition till realization.

12. While issuing notice for final disposal of these appeals, we had directed the appellant Insurance Company to deposit the compensation amounts with proportionate costs and interest at the rate of 9 per cent per annum. If the direction given by this Court on 31st July 2006 in Civil Applications Nos.8867 to 8871 of 2006 is not complied with till today, the same shall be done by 15th December,

2006. In case the condition is not complied with, it will be open to the original claimants to bring this fact to the notice of the Court for further appropriate directions and this Court may, in that case, review this judgment reducing the rate of interest.

13. The appeals are accordingly allowed in the aforesaid terms. There shall be no order as to costs of these appeals.

14. Civil Applications shall also stand disposed of in terms of the aforesaid directions.

(M.S.Shah, J.)

(Akil Kureshi, J.)

(vjn)